

Application No. 10/089,164
Reply to Office Action of April 21, 2003

REQUEST FOR RECONSIDERATION

Applicants thank Examiner Carrillo for the helpful and courteous discussion of April 15, 2003. During the discussion the Examiner indicated that Claim 1 would be allowable if amended to incorporate the limitations of original Claim 3, Claims 13, 21-22 and 29-30 were cancelled and the remaining claims amended for clarity. Applicants elected to receive an Office Action detailing the rejection.

The Office rejected Claims 1-30 under 35 U.S.C. § 112, first paragraph on the grounds that the disclosure is not enabling. The Office asserted that the limitations of 40-80°C and 100-300 bars pressure are critical and/or essential to the practice of the invention but are not included in the claims. Applicants traverse the rejection noting that it may be possible for a gas to exist in a dense fluid state (such as a super-critical state) at temperatures and pressures that are not necessarily within the range of 40-80°C and 100-300 bars pressure. In fact, in the specification it is stated:

Thus, in the process according to the invention, a gaseous compound for example is used under normal temperature and pressure conditions, and its density is increased by increasing its pressure. The temperature can also be modified to enter the range in which the fluid is in the dense state and under pressure, preferably in its super-critical state. Those skilled in the art will find it easy to define this range.

Therefore, as noted above in the excerpt from the specification, the temperature at which the fluid is in the dense state can be modified. Further, it is stated that those of ordinary skill in the art "will find it easy to define this range." Therefore the limitations of 40-80°C and 100-300 bars is not necessarily a limitation that is critical or essential to the practice of the invention.

The claimed process requires that the cork based material is contacted with a dense fluid under pressure. Such a dense fluid under pressure may exist outside the limits for a

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temperature and pressure which the Office asserts is critical or essential. Applicants respectfully request the withdrawal of the rejection.

The Office further rejected the claims under 35 U.S.C. § 112, second paragraph as indefinite. The Office asserted that Claims 1 and 12 are indefinite because the term "dense fluid under pressure" is unclear to those of ordinary skill in the art. The Office has cited to the disclosure in the specification (page 12, lines 7-13) indicating that the dense fluid under pressure must exist at a temperature of 40-80° C and a pressure of 100-300 bars. The disclosure at page 12, lines 8-11 is reproduced below for convenience:

According to the invention, fluid in the dense state under pressure is preferably put into contact with cork or the cork-based material at a pressure of 100 to 300 bars and at a temperature of 40-80°C.

Contrary to the Office's assertion, the specification does not state that the dense fluid under pressure must be contacted with the cork at a temperature of 40-80°C and a pressure at 100 to 300 bars, but rather states that the cork is preferably put into contact with the dense fluid under pressure at these conditions. Nowhere is it stated or suggested in the disclosure cited by the Office that these are the only conditions under which the claimed process can be carried out. Further, the contact of a cork-based material with the dense fluid under pressure at a temperature of from 10-120° C and a pressure of from 10 to 600 bars, as recited in original Claim 1, is supported by the disclosure in the specification at page 10, lines 5-11.

Applicants submit that Claims 1 and 12 are not indefinite as asserted by the Office and that the range of temperature and pressure recited in original Claim 1 is proper since it is possible that a dense fluid under pressure can exist outside the temperature and pressure range which is disclosed as the preferable temperature and pressure range at page 12, lines 8-11 of the specification.

The Office further asserted that Claim 1 is indefinite because it fails to positively recite a step of cleaning the cork which the Office asserted is an essential feature of the

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invention. Applicants submit that Claim 1, as amended to recite contacting a cork-based material with the dense fluid under pressure, is not indefinite as evidenced by the recitation of contacting as an active step of the claimed process. Applicants respectfully request withdrawal of the rejection.

The term "cork-based material" is explicitly defined in the specification on page 10, lines 13-16. Applicants submit that the recitation of the term "cork-based material" in the claims is not improper and respectfully request the withdrawal of the rejection.

The amendment to the claims obviates the rejections under 35 U.S.C. § 112, second paragraph.

The cancellation of Claims 22 and 30 obviates the rejection in view of Shrive (WO 98/16216288).

The Office rejected Claims 1-8, 12-21, 23, 25-29 under 35 U.S.C. § 102(a) as anticipated by a publication to Taylor (J. of Agricultural and Food Chemistry (200), 48 (6), pp. 2208-2211). Applicants note the present application is the U.S. national stage application of international application PCT/FR00/02653 filed on September 26, 2000. The PCT application claims priority to prior-filed French Application 99/12003 filed on September 27, 1999. Applicants will file a certified English translation of the priority document FR 99/12003 with the U.S. Patent and Trademark Office shortly after the filing of the present response. Applicants will have thereby perfected the claim to priority and antedated the Taylor reference. Applicants respectfully request the withdrawal of the rejection in view of Taylor upon submission of the certified English translation of the priority document.

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Applicants submit the amendment to the claims places all now-pending claims in condition for allowance. Applicants respectfully request the withdrawal of the rejections and the passage of all now-pending claims to Issue.

Respectfully submitted,

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